IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CONTEMPT PETITION NO. 97 OF 2005
IN
WRIT PETITION NO. 306 OF 2000

SITARAM ATMARAM GHAG & ORS. ... PETITIONERS.
VS.
CARONA LIMITED & ORS. ... RESPONDENTS.

MS. GAYATRI SINGH FOR THE PETITIONERS.
MR. C.V.SINON SR. ADV. I/B. SANJAY UDESHI & CO. FOR THE RESPONDENTS.

Coram : S.K.Shah, J.
Date : March 24, 2006.

P.C.

1. This Contempt Petition is filed alleging that the Respondents have not complied with the Order passed by this Court on 29.7.2004. The relevant portion of the Order reads thus:-

> "5. In the light of that, the impugned Order cannot be faulted. However, direction (4) of the Order will have to be modified and stands modified as under :-
>
> > The Petitioners are directed to pay to the workmen as set out in the order wages from September, 1996 till date and to continue to pay the same as long as the Respondent workmen continue to be employees, employed by the Petitioner and or until payments are made under the VRS Scheme. If the management hereinafter makes payment under the VRS Scheme, from that date, the liabilities of the employer to pay to the workmen the wages will cease....."

2. By this Order what was done by this Court is that the Order of the Tribunal was confirmed and only clause (4) of the Tribunal's Order was modified, clarifying that the wages from September, 1996 till date and to continue to pay the same as long as the Respondent workmen continue to be employees, employed by the Petitioner and or until payments are made under the VRS Scheme.

3. The grievance is that this Order has not been complied with and the wages have not been paid nor the VRS dues are paid.

4. The learned Counsel for the Respondents raised Preliminary objections, stating that this contempt petition is barred by the principles of res-judicata, in view of the disposal of the Contempt Petition No. 90/2000 of the very Petition, by Order dated 13th September, 2000.

5. A perusal of the Order, dated 13th September, 2000, passed in Contempt Petition NO. 90 of 2000, indicates that the said contempt petition was lodged because the Respondent had failed to comply with the interim Order passed by this Court in the Writ Petition. That Order reads as under :-

> "Pending the hearing and final disposal of the Petition, there would be a stay to the recovery of wages, only from September, 1996, subject to the Petitioners depositing the other dues,namely VRS amount and the Gratuity and interest thereon within 8 weeks rom today. If the amount is deposited, liberty to the respondents to apply for withdrawal."

6. Since the amount of VRS is not paid within 8 weeks from the date of the Order and also not paid the Wages as directed by the Industrial Tribunal, the said Contempt Petition was filed. That contempt petition came to be disposed of essentially on the ground of availability of alternative remedy to the Petitioner to adopt proceeding under Sections 48 and 50 of the MRTU & PULP Act, 1971, on the basis of Judgment of the Apex Court, reported in 2000 Vol.4 SCC 400.

7. In this view of the matter, therefore, by Order dated 13th September, 2000, the Contempt Petition came to be disposed of holding that the alternate remedy was available for execution of the Tribunal’s Order.

8. Thereafter, this Court passed the aforesaid final Order, confirming the Order of the Tribunal, only modifying the clause (4) of the Order.

9. No doubt, by virtue of the said Order, passed by this Court, the Order of the Tribunal is merged in this Order. However, the position that was before this Court, while disposing of the Contempt Petition No. 90 of 2000, does not vary.

10. What is pertinent to be noted is that against the Order, dated 13th September, 2000, dismissing the Contempt Petition, the Petitioners had preferred an Appeal, being Appeal No. 1046 of 2000, in Contempt Petition No. 90 of 2000, in Writ Petition No. 306 of 2000 and the said Appeal was ultimately dismissed by the Division Bench of this Court, by Order dated 3rd August, 2001.

11. The present contempt petition also is for non-compliance of the Order passed by this Court, confirming the Order of the Tribunal.

12. Under the circumstances, the Preliminary Objection raised on behalf of the Respondent is proper. There is alternate remedy available to the Petitioner for getting the Order of the Tribunal executed, under the provisions of Section 48 and 50 of the MRTU & PULP Act, 19971. The same thing applies to the final Order passed by this Court, confirming the Tribunals Order, except slight modifications. On this point alone, the contempt petition shall have to be dismissed.

13. There are certain other objections, which the learned Counsel for the Respondent had raised, however, I do not consider the same as on the first objection itself, the petition deserves to be dismissed.

14. The learned Counsel for the Petitioners submits that there are rulings of the Apex Court, which say that although the alternate remedy is available, contempt petition can lie & contempt petition can be entertained. There shall be no dispute about this preposition. The question is whether in this particular case, the contempt petition could be entertained, when the similar contempt petition came to be dismissed earlier and disposal of the said contempt petition is confirmed by the Appeal Court. To my mind, the present contempt petition, although can lie cannot be entertained in view of the fact that earlier contempt petition was disposed of on account of avail ability of alternate remedy and the same position prevails even now.

15. Under these circumstances, the contempt petition stands dismissed.

....

[S.K.Shah , J.]